

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 2370 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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JAVATIBEN BHUPSINHIJI - Appellant(s)
Versus
NARPATSINH BHUPSINHIJI DELETED & 2 - Defendant(s)

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Appearance :

MR CHIRAYU A MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1,
MR VC VAGHELA for Defendant(s) : 2,
SERVED BY RPAD - (N) for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE K.M.MEHTA****Date : 03/11/2006**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

In the facts and circumstances of the case, particularly, in view of the fact that the appellant-claimant's petition for compensation under Section 163A was dismissed, in spite of the fact that the Tribunal had recorded the finding that the claimant had suffered paraplegia and loss of use of lower limbs, we had issued notice for final disposal on 06/07/2006. Since the notices were not received back for respondent Nos.2 and 3, on 10/08/2006, we had permitted the appellant to serve the said respondents by Regd. Post A.D. The cause list indicates that respondent No.2 is served. Respondent No.3-Oriental Insurance Co. Ltd. is shown as served by Regd. Post A.D. Though Mr. Vaghela appears for respondent No.2-owner of the Jeep involved in the accident, none appears for respondent No.3-Oriental Insurance Co. Ltd. In the facts and circumstances of the case, we have thought it fit to take up the appeal for final disposal, as already indicated in our order dated 06/07/2006.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 16/02/2006 of the Motor Accident Claims Tribunal (Main) Banaskantha at Palanpur dismissing the MAC Petition No.174 of 2000.

3. Appellant - Javatiben Jetabhai Mali (hereinafter referred to as "the original claimant") filed claim petition under Section 163A of the Act claiming compensation of Rs.4,61,000/-. On 18/10/1999, the original claimant was travelling in a jeep driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3-Oriental Insurance Co. Ltd., Palanpur. The jeep met with an accident and the claimant suffered serious injuries resulting into Paraplegia. The claimant is unable to move her lower limbs and she also lost control of bladder and bowel and Dr. A.A. Patel as well as Dr. Nirav Gadhavi issued disability certificates certifying that the claimant has suffered permanent total disability at 100% of the whole body.

4. After considering the oral and documentary evidence on record, the Tribunal has given the following finding :-

"I have perused the entire medical evidence viz., prescriptions, X-ray, Reports, Laboratory Reports, medical bills, Injury Certificates, disability certificates etc. I have no quarrel with the expert finding of Dr. A.A. Patel and Dr. Nirav Gadhvi that applicant is suffering from paraplegia and is unable to move both her lower limbs and has also lost control of Bladder and Bowel and as such, disability is 100% to whole body."

After giving the above categorical finding, the Tribunal expressed its inability to give relief to the claimant only on the ground that under Section 163A of the Act the Tribunal can award compensation only if the injury suffered by the claimant is enumerated in Schedule-A under Workmen's Compensation Act, 1923. The Tribunal accordingly dismissed the claim petition under Section 163A of the Act after indicating to the claimant that it was open to her to file an application under Section 166 of the Act.

5. Section 163A of the Motor Vehicles Act reads as under :-

“Section 163-A : Special provisions as to payment of compensation on structured formula basis. - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, **as indicated in the Second Schedule,** to the legal heirs or the victim, as the case may be.”

(emphasis supplied)

The Second Schedule provides for compensation for fatal accidents/injuries cases. Clause (5) in the said schedule reads as under:-

"Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising on of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following :-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

(emphasis supplied)

6. Schedule-I under the Workmen Compensation Act, 1923 reads as under:-

Schedule-1
[See sections 2(1) and (4)]
(PART-1
**LIST OF INJURIES DEEMED TO RESULT IN PERMANENT
TOTAL DISABLEMENT)**

Sr. No.	Description of Injury	Percentage of loss of earning capacity
1	Loss of both hands or amputation at higher sites.	100
2	Loss of a hand and a foot	100
3	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100

PART-II
**LIST OF INJURIES DEEMED TO RESULT IN PERMANENT
PARTIAL DISABLEMENT)**

Sr. No.	Description of Injury	Percentage of loss of earning capacity
	Amputation cases-upper limbs (either arm)	
1	Amputation through shoulder joint	90
	Amputation cases-lower limbs	
11	Amputation of both feet resulting in end bearing stumps	90
12	Amputation through both feet proximal to the metatarsophalangeal joint	80
16	Amputation at hip	90

Note – Complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member.

(emphasis supplied)

7. After giving the finding that the claimant is suffering from paraplegia and is unable to move both her lower limbs and has also lost control of bladder and bowel and disability is 100% of the whole body, it is unfortunate that the Tribunal has completely overlooked the note below the schedule-I under the Workmen's Compensation Act, 1923, which clearly indicates that complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member. Hence, complete and permanent loss of the use of the lower limbs must be treated as equivalent of loss of both the lower limbs i.e. 100% loss of earning capacity.

In view of above statutory provisions of the Second Schedule of the Motor Vehicles Act, 1988 read with the provisions of Schedule-1 (along with the note) to the Schedule under the Workmen Compensation Act, 1923), we have no hesitation in holding that the appellant's case is squarely covered within four corners of the provisions of Section 163A of the Motor Vehicles Act.

8. The appellant was aged about 30 years on the date of incident and was doing cattle rearing work and selling vegetables. As per the averments made in the claim petition, the claimant was earning Rs.3,000/- per month. The compensation payable to

the appellant under Section 163A read with the Second Schedule would, therefore, be Rs.5,10,000/-. The question of reducing the amount of compensation, as indicated in the Table by one-third in consideration of the expenses, which the victim would have incurred towards maintenance had he been alive would not arise in an injury case and such reduction would be required only in a fatal case. Hence, notwithstanding the error committed by the advocate for the claimant in claiming a lower amount than the one indicated in the Second Schedule, it cannot be allowed to work to the detriment of the appellant who has been reduced to the condition of vegetation on account of paraplegia resulting into loss of use of the lower limbs and also loss of control of bladder and bowel.

9. In view of Note-4 to Second Schedule under the Motor Vehicles Act, the claimant would also be entitled to get Rs.5,000/- as damages for injuries and disabilities. The learned advocate for the appellant is not in a position to give details about the bills/vouchers for medical treatment. Hence, we do not consider the claim of compensation for medical expenses, more particularly, when we are awarding Rs.5,10,000/- to the appellant as compensation for the permanent total disability.

10. The appeal is accordingly partly allowed. The respondents are directed to pay compensation of Rs.5,15,000/- to the appellant-claimant-Javatiben

Jetabhai Mali alongwith proportionate costs and interest at the rate of 9% p.a. Respondent No.3-Oriental Insurance Co. Ltd., Palanpur shall deposit the additional amount within two months from the date of receipt of the certified copy of this judgment.

It is also directed that even if the insurance Company does not receive any decree drawn on the basis of this judgment, the insurance-Company shall deposit the amount of compensation as well as the interest at the rate of 9% per annum from the date of the claim petition (i.e. from 15/03/2000) till the date of deposit within the aforesaid time limit. It is only for the costs that for the purpose of deposit of the amount of costs, the insurance Company may wait for the decree of this Court.

11. Upon deposit of the amount as aforesaid, the Tribunal shall invest 90% of the amount in eight fixed deposits (of Rs.1 lac each) with a nationalized bank near the residence of the claimant for a period of five years with usual conditions about prohibition against premature encashment of/ encumbrance over the deposits and with permission to the claimant to withdraw interest periodically accruing on such fixed deposits. The balance amount shall be disbursed to the claimant by an account payee cheque after informing her about the amounts being invested/dispursed and the terms and conditions of investment.

12. In case of any necessity, it will be open to the appellant-claimant to move the Tribunal at Palanpur for premature encashment of a deposit.

A copy of this judgment shall be circulated amongst all the Motor Accident Claims Tribunal in the State.

(M. S. Shah, J.)

(K. M. Mehta, J.)

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